

C.A. No. 11-50107

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DANIEL EDWARD CHOVAN,

Defendant-Appellant.

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JOINT MOTION FOR CLARIFICATION OF THE COURT'S ORDER AND  
EXTENSION OF TIME TO FILE BRIEFS IN RESPONSE

Pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 27-1, the parties respectfully move the Court for clarification of the Court's December 17, 2012, order and a 30-day extension of time in which to file their briefs. The reasons for this motion are noted in the parties' declaration.

DATED: December 21, 2012

LAURA E. DUFFY  
United States Attorney

s/Caroline P. Han

CAROLINE P. HAN  
Assistant U.S. Attorney

United States Attorney's Office  
880 Front Street, Room 6293  
San Diego, CA 92101-8893  
Telephone: (619) 546-6968  
Attorneys for Plaintiff-Appellee  
United States of America

s/ Devin Burstein

DEVIN BURSTEIN  
Federal Defenders of San Diego, Inc.  
225 Broadway Street  
San Diego, CA 92101  
Telephone: (619) 234-8467

Attorneys for Defendant-Appellant

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UNITED STATES OF AMERICA,

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v.

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Appeal from the United States District Court  
for the Southern District of California  
Honorable John A. Houston, District Judge

The parties declare as follows:

1. The Panel heard argument in this case, on February 15, 2012. Following argument, on April 12, 2012, the Panel issued an order “to file concurrent letter briefs on the applicability of United States v. Brailey, 408 F.3d 609 (9th Cir. 2005), to this case.” The parties submitted their letter briefs to the Court on April 26, 2012.

2. The Panel issued another order on December 17, 2012, which provided: “[a] *sua sponte* en banc call having been made by the panel, the parties are instructed to file simultaneous briefs setting forth their respective positions on whether the case should be reheard en banc within 21 days of the filing of this order.”

3. This case raises a number of weighty, novel, and important issues regarding the Second Amendment, the constitutionality of 18 U.S.C. § 922(g)(9), and the proper interpretation of 18 U.S.C. § 921(a)(33)(B)(ii). The Panel's recent order, however, does not specify the issue or issues forming the basis of its *sua sponte* call for en banc review. To better assist the full Court in making a decision as to en banc review, the parties ask for clarification of the issue(s) on which the Court is focused and appropriate length for the parties' briefing. This will allow the parties to tailor their briefs and more effectively respond to the Panel's order.

4. The parties seek an extension of time to file their briefs to adequately prepare their briefs for the following reasons:

a. The Government is required to seek the Solicitor General's approval of the position it will take in its responsive brief, a process that will take some time. In addition, counsel for the Government is preparing for a multi-week trial in a terrorism matter, So. Dist. Cal. No. 10CR4246-JM, United States v. Moalin et al., calendared for January 28, 2013.

b. Counsel for Appellant has a number of briefs due to this Court and oral arguments scheduled for January, in United States v. Lopez-Cruz, Case No. 11-50551 and United States v. Ramirez, Case No. 11-50346.

Accordingly, the parties respectfully ask the Panel for thirty days from the ruling on this motion within which to complete briefing.

5. Appellant is not in custody and is serving his probationary sentence. Consequently, the parties believe that he will not be prejudiced by the granting of this motion.

6. Based on the above, the parties respectfully request clarification of the Panel's Order and a 30-day extension of time, from the ruling on this motion, within which to file the parties' briefs.

Dated: December 21, 2012

s/ Caroline P. Han  
CAROLINE P. HAN  
Assistant U.S. Attorney

s/ Devin Burstein  
DEVIN BURSTEIN  
Attorney for Appellant